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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,314	12/16/2004	Karl Freudelsperger	71595	6738
23872	7590	09/21/2007	EXAMINER	
MCGLEW & TUTTLE, PC P.O. BOX 9227 SCARBOROUGH STATION SCARBOROUGH, NY 10510-9227			GREENHUT, CHARLES N	
		ART UNIT	PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/518,314	FREUDELSPERGER, KARL	
	Examiner	Art Unit	
	Charles N. Greenhut	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 July 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 December 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3652

I Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore,
 - 1.1. the "dispatch station" of claims 1 and 12,
 - 1.2. the "article commissioning device dispatch station" of claim 3
 - 1.3. the "second container" of claim 3must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

II Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: It is unclear what constitutes the "central belt commissioning device" of claim(s) 1-13. It is unclear what constitutes the "dispatch station" of claim(s) 1-13.

III Claim Rejections - 35 USC § 112

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - 1.1. With respect to claim(s) 1, it is unclear what is meant by the phrase, "associated with" in lines 10, 22, and 26.

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- 1.2. With respect to claim(s) 1, it is unclear how the dispatch station (apparently at a location further down track (3) –pp [0036]) is included as part of the central belt commissioning device (apparently a component of feed tray (2)). While the commissioning device may have a dispatch station, the phrase, "the dispatch station" is used in line 24 as an alternative transfer location to the central belt commissioning location. Clarification is required.
- 1.3. With respect to claim(s) 3, it is unclear what is meant by the phrase, "associated with" in line 11.
- 1.4. With respect to claim(s) 3, the phrase, "said shelves" in line 14 lacks antecedent basis.
- 1.5. With respect to claim(s) 3, and 13 the phrase, "said second articles being transferred to said dispatching station, or to said central belt for further filling with said first articles, or to said removing track" requires transport to any of these location in the alternative only, however, the following limitation, "said removing track conveying said containers filled with second articles" is not recited in the alternative case and would require both that the containers be transferred to the removing track and to the central belt, but not necessarily the discharge station. Clarification is required.
- 1.6. In claim 3, line 35-36, the phrase "second articles the end of the central belt" requires grammatical correction.
- 1.7. With respect to claim(s) 9, usage of alternative phraseology, "and/or" and "is/are" renders it unclear which component is required to have the discharge station. Furthermore, since only one discharge station is previously set forth it is unclear how multiple components (i.e., the "and" scenario) can each have a discharge station.
- 1.8. The dependency of claim 13 appears to be improper since antecedent basis is not provided for many of the claim terms. Claim 13 is Examined on the merits as depending from claim 12.
- 1.9. With respect to claim(s) 13, it is unclear what is meant by the phase, "is defined by a conveying track in a commissioning area of the central belt in parallel to the central belt or in at least one discharge station of the conveying track." Clarification is required.

IV Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1 and 12, is/are rejected under 35 U.S.C. 102(b) as being anticipated by YUYAMA (US 5,832,693 A).
 - 1.1. As best understood by Examiner, with respect to claim(s) 1, and 12 YUYAMA discloses, providing shelves (60/80) a plurality of containers (T), a central belt (21-belt conveyors), central belt

commissioning device (U), dispatch station (X), conveying tracks (30/40) on each side of central belt (21), having containers (T), first articles (A) transportable by the central belt (21), second articles (B) on shelves (80) not transportable by the central belt (21), transferring second articles (B) from shelves (80) into containers (T), automatically moving first articles (A) from a location above the central belt (21) to a location on the belt (via U), transporting containers (T) with second articles (B) to the dispatch station (X), transferring first articles (A) from central belt (21) to a stationary container (50) at an end of the central belt (21), when containers with second articles (B) are transported to the dispatch station (X).

V Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claim(s) 2 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over YUYAMA (US 5,832,693 A) in view of WUNSCHER (US 5,943,841 A).
 - 1.1. With respect to claim(s) 2, YUYAMA additionally discloses a removing track (40). YUYAMA commissions the automatically commissioned articles directly into a tray (T) on the belt instead of directly onto a belt and then into a tray at the end of the belt, where the manually commissioned articles have already been placed into that tray. Firstly, it is well-known that articles may be commissioned directly onto a belt for later filling into a container or tote, as demonstrated, for example, by WUNSCHER (Fig. 2). It would have been obvious to one having ordinary skill in the art to commission articles directly onto a belt if the articles were suitable for such commissioning since the apparatus could be simplified (e.g., accommodations for the tote at each automatic commissioning location would not be necessary). Furthermore, the controller of YUYAMA is capable or distinguishing which articles are to be commissioned manually and which articles are to be commissioned automatically (Fig. 5A-B), so the step of manually commissioning articles (B) into the container (T) can be performed regardless of whether the first articles (A) have already been placed in the container. Reversing the commissioning order would obtain predictable results that would have been obvious to one having ordinary skill in the art.
2. Claim(s) 3-4, 7-9 and 13 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over YUYAMA (US 5,832,693 A)
 - 2.1. As best understood by Examiner, with respect to claim(s) 3, 7, 9, and 13, YUYAMA discloses, a central belt (41), having article commissioning device dispatch station (X), first articles (A)

transportable by the central belt (41), means for moving first articles to the central belt (U), a first container (T at U), second container (T at 50), first shelving unit (60) on a first side of central belt (41), second shelving unit (80) on another side of central belt (41), first conveying track (21) associated with first shelving unit (60), container thereon (T at U), second conveying track (50), second container thereon (T at 50). As best understood by Examiner, claim 3 apparently calls for a removing track to be interposed between the second article filling location and the first article filling location. The controller of YUYAMA is capable or distinguishing which articles are to be commissioned manually and which articles are to be commissioned automatically (Fig. 5A-B), so the step of manually commissioning articles (B) into the container (T) can be performed regardless of whether the first articles (A) have already been placed in the container. Reversing the commissioning order (e.g., commissioning articles prior to placing on removing track 31 above central belt 41) would obtain predictable results that would have been obvious to one having ordinary skill in the art.

- 2.2. With respect to claim(s) 4, YUYAMA additionally discloses the central belt (41) in an aisle defined between shelving units (60/80), each shelving unit having first and second parallel spaced apart shelves (Fig. 1), and the first (21) and second (50) conveying tracks arranged close to the floor.
- 2.3. With respect to claim(s) 8, the location of the removing track involves merely the rearrangement of parts that would be obvious to one having ordinary skill in the art. It would be obvious to one having ordinary skill in the art to arrange the YUYAMA components to conform to the design constraints of the implementation environment.
3. Claim(s) 5-6 and 10-11 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over YUYAMA (US 5,832,693 A) in view of LINDQVIST (US 5,271,703 A)
 - 3.1. With respect to claim(s) 5-6 and 10-11, YUYAMA additionally discloses conveying tracks (21/50) in an area of central belt (41). YUYAMA fails to disclose that the conveying tracks are integrated into the shelving units. It is well-known in the art that conveying tracks may be integrated into shelving units, as demonstrated, for example, by LINDQVIST (Fig. 1). It would have been obvious to one having ordinary skill in the art to integrate the conveying units into the shelving units to facilitate commissioning.

VI Response to Applicant Arguments

Applicants arguments entered 7/9/07 have been fully considered.

1. Applicant argues that the claims, as amended, are not anticipated nor rendered obvious by YUYAMA because YUYAMA fails to provide two separate paths for commissioning two different types of articles. This argument is not persuasive. This statement is clearly in error since the commissioning path or articles A & B is clearly different.
2. Applicant argues that the claims, as amended, are not anticipated nor rendered obvious by YUYAMA because YUYAMA fails to disclose the container is first filled with one article from one commissioning

path and then transferring that container to a central belt for filling with another article commissioned from an alternate path. This argument is not persuasive. Containers (T) are first filled with articles (A) via a first path, then the container is transferred to the end of belt (e.g., 21/41) for commissioning with articles (B) via a second path.

VII Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 6:30am - 3:00pm EST.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached at (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG

Cl

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SUPERVISORY PATENT EXAMINER